

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: WORLD TRADE CENTER  
DISASTER SITE LITIGATION

21 MC 100 (AKH)

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IN RE: WORLD TRADE CENTER LOWER  
MANHATTAN DISASTER SITE  
LITIGATION

21 MC 102 (AKH)

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IN RE COMBINED WORLD TRADE  
CENTER DISASTER AND LOWER  
MANHATTAN DISASTER SITE  
LITIGATION (straddler plaintiffs)

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21 MC 103 (AKH)

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**MEMORANDUM OF LAW IN SUPPORT OF SETTLING DEFENDANTS' MOTION  
FOR EXTENSION OF TIME**

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James E. Tyrrell, Jr.  
Joseph E. Hopkins  
Jason W. Rockwell  
PATTON BOGGS LLP  
1185 Avenue of the Americas  
New York, New York 10036

-and-

The Legal Center  
One Riverfront Plaza, 6th Floor  
Newark, New Jersey 07102  
Tel: (973) 848-5600  
Fax: (973) 848-5601  
Attorneys for Defendants  
The City of New York and the  
Contractors

Defendants the City of New York and the Contractors<sup>1</sup> (collectively, the “Settling Defendants”) respectfully submit this memorandum of law in support of their motion for an extension of time pursuant to Paragraph 8 of Case Management Order Nos. 10, 7, and 2 in the 21 MC 100, 21 MC 102, and 21 MC 103 Consolidated Master Dockets, respectively (hereinafter referred to collectively as “CMO 10”).<sup>2</sup>

### **STATEMENT OF FACTS**

On June 10, 2010, counsel for the World Trade Center (“WTC”) Captive Insurance Company (the “WTC Captive”), 21 MC 100 Plaintiffs’ Co-Liaison Counsel, and counsel for the Settling Defendants (collectively the “Settling Parties”) signed the World Trade Center Litigation Settlement Process Agreement, as Amended (“Amended Settlement Agreement”). The Amended Settlement Agreement provided that plaintiffs must decide whether to participate in the settlement on or before September 8, 2010 (the “opt-in period”).

On June 23, 2010, the Court entered CMO 10 with consent of the parties. CMO 10 imposes certain obligations upon the parties relating to the filing of complaints or amended complaints and responses thereto, the completion of Court Database information, and the service of case-specific expert reports. (CMO 10, June 23, 2010, Tyrrell Cert., Ex. A.) Paragraph 8 of CMO 10 further provides that “[t]his Order shall become void and of no prospective or retroactive effect as to any Plaintiff or Listed Defendant if affirmation of a final settlement agreement is not executed by all required signatories under the settlement agreement by October 21, 2010, such

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<sup>1</sup> AMEC Construction Management, Inc., AMEC Earth & Environmental, Inc., Bovis Lend Lease LMB, Inc., Evergreen Recycling of Corona (E.R.O.C.), Plaza Construction Corp., Tully Construction Co., Inc., Turner Construction Company, and Turner/Plaza, A Joint Venture, as well as the entities identified in Exhibit A to the World Trade Center Litigation Settlement Process Agreement, as Amended.

<sup>2</sup> The Settling Defendants shall refer to these three case management orders collectively as CMO 10 for ease of reference and because they are identical in all respects save for the caption. All three orders were also entered on the same date.

date subject to extension of time on motion for good cause shown by any Listed Defendant.” (*Id.*) On August 25, 2010, the opt-in period was extended for 60 days, until November 8, 2010. (*See* Letter from McDermott Will & Emery to Paul J. Napoli, Esq. and Nicholas Papain, Esq., August 25, 2010, Tyrrell Cert., Ex. B.)

### **ARGUMENT**

In light of the extension of the opt-in period from September 8, 2010 to November 8, 2010, the October 21, 2010 date provided in Paragraph 8 of CMO 10 should likewise be extended. There can be no dispute that good cause exists to extend this date to a date beyond the expiration of the current opt-in period. The October 21, 2010 date for the possible expiration of CMO 10 was based upon the anticipated expiration of the original opt-in period on September 8, 2010. The Court’s and the parties’ intent was to allow approximately six weeks from expiration of the opt-in period for the parties to execute the affirmation of a final settlement agreement before CMO 10 potentially would become void. Because the opt-in period was extended by two months, from September 8, 2010 until November 8, 2010, the October 21, 2010 date provided in Paragraph 8 of CMO 10 should be extended until at least December 21, 2010, to be consistent with the Court’s and the parties’ intent that sufficient time exist following the expiration of the opt-in period to execute the affirmation of final settlement agreement.

**CONCLUSION**

For the foregoing reasons, the Settling Defendants respectfully request that this Court extend the date provided in Paragraph 8 of Case Management Order Nos. 10, 7, and 2 in the 21 MC 100, 21 MC 102, and 21 MC 103 Consolidated Master Dockets, respectively, from October 21, 2010 until at least December 21, 2010.

Dated: October 21, 2010

/s/ James E. Tyrrell, Jr.

James E. Tyrrell, Jr. (JT 6837)  
PATTON BOGGS LLP  
1185 Avenue of the Americas  
New York, New York 10036  
(212) 246-5100

-and-

One Riverfront Plaza, 6th Floor  
Newark, New Jersey 07102  
(973) 848-5600

*Attorneys for Defendants  
The City of New York and the Contractors*